

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MICHAEL J. WEGENER, L. JEROME PRIBIL, and KOOL AGRICULTURAL SPR DE RL DE CV,)	CIVIL ACTION NO.: 4:16-CV-03175
Plaintiffs,)	FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT, AND REQUEST FOR JURY TRIAL
vs.)	
AXA SEGUROS, S.A. DE C.V. and ISAAC V. WALL,)	
Defendants.)	
)	

COME NOW, the plaintiffs, Michael J. Wegener, L. Jerome Pribil, and Kool Agricultural SPR DE RL DE CV, and for their First Amended Complaint against the defendants, AXA SEGUROS, S.A. DE C.V. and Isaac V. Wall, allege and state as follows:

1. Plaintiff, L. Jerome Pribil, at all times relevant hereto, was a resident of Sheridan County, Nebraska.
2. Plaintiff, Michael J. Wegener, at all times relevant hereto, was a resident of Platte County, Nebraska.
3. Defendant, AXA SEGUROS, S.A. DE C.V., (hereinafter "AXA"), is a foreign insurance company operating within the country of Mexico and the United States, and is authorized to do and does conduct an insurance business within the State of Nebraska.
4. Defendant Isaac V. Wall is and at all relevant times hereto was a resident of Seminole, Texas and an interest holder in Kool Agricultural SPR DE RL DE CV, the insured, under Policy No. TSA414060000.

5. Pursuant to *Neb. Rev. Stat.* § 25-21,154, Isaac V. Wall has an interest in the controversy and is a necessary party to this action to allow a judgment or decree to terminate the uncertainty or giving rise to the proceeding.
6. The United States District Court for the District of Nebraska has original jurisdiction over the claims asserted pursuant to 28 U.S.C. §1332 (a)(3). Diversity is complete with respect to the parties who are United States citizens. Plaintiffs Michael J. Wegener and L. Jerome Pribil are domiciled in the State of Nebraska. Defendant Isaac V. Wall is domiciled in the State of Texas. Plaintiff Kool Agricultural SPR DE RL DE CV and Defendant AXA are subjects of a foreign state and are additional parties under the meaning of §1332 (a)(3). The amount in controversy in this action is reasonably estimated to exceed \$75,000.00 exclusive of interest and costs.
7. On or about May 10, 2013, AXA issued a contractor's equipment and heavy mobile machinery insurance policy, Policy No. TSA414060000, to Kool Agricultural SPR DE RL DE CV (hereinafter "Kool Ag"), insuring, among other things, certain equipment and machinery purchased by them for use in an agricultural business in Campeche, Mexico. Under a specific endorsement in that policy, Michael J. Wegener and L. Jerome Pribil, are named as loss payees. A copy of said policy is attached hereto as Exhibit "A" and incorporated herein by this reference.
8. Michael J. Wegener and L. Jerome Pribil, as interest holders in Kool Ag purchased certain equipment in the name of Kool Ag which is listed in a

separate endorsement to the policy.

9. During the months of November and December of 2013, plaintiffs purchased from Lindsay Irrigation Company, certain pivot irrigation systems for the purchase price of \$1,019,795.38. The sale was to be brokered through Lindsay's equipment dealer, IJS Irrigation, L.L.C. with the sale price guaranteed by the plaintiffs, Michael J. Wegener and L. Jerome Pribil. Isaac V. Wall was an interest holder in IJS Irrigation, L.L.C.
10. When the pivot irrigation systems were delivered to IJS Irrigation, L.L.C. they were misappropriated and never delivered to Kool Ag nor Michael J. Wegener, nor L. Jerome Pribil, or any entity under their custody or control.
11. A claim was made to the defendant asking for recovery under the policy at which time, the plaintiffs were told there was no coverage for the claim or that benefits were excluded under the policy.
12. As a result of the claim made for benefits under the policy, the defendant, AXA, denied coverage and that benefits were owned under the policy.

**FIRST CLAIM FOR RELIEF
(DECLARATORY RELIEF)**

13. The plaintiffs hereby incorporate herein by this reference Paragraphs 1-10 as though fully set forth herein.
14. There is presently an existing controversy between the plaintiffs and AXA Insurance concerning the insurance policy issued to the plaintiffs by AXA Insurance.
15. A declaratory judgment is necessary to determine the rights of the parties under the insurance policy to include, but not limited to, whether AXA

Insurance's denial was improper, illegal and/or contrary to the law and the facts, and if Isaac V. Wall, as an interest holder in Kool Ag would be entitled to any benefits payable under the policy.

**SECOND CLAIM FOR RELIEF
(BREACH OF CONTRACT)**

16. The plaintiffs hereby incorporate herein by this reference Paragraphs 1-13 as though fully set forth herein.
17. AXA Insurance has breached its contract with the plaintiffs (i.e., the Insurance Policy) by failing to meet its obligations and conditions as set forth herein.
18. AXA Insurance has further breached its contract with the plaintiffs (i.e., the Insurance Policy) by failing to afford coverage and pay the plaintiffs compensation for loss and damages suffered by them as discovered in the months of November and December, 2013, and January 2014.
19. As a direct and proximate result of AXA Insurance's breach of the contract, the plaintiffs have been damaged in an amount in excess of One Million Nineteen Thousand Seven Hundred Ninety-Five Dollars and Thirty-Eight Cents (\$1,019,795.38) for the loss of the pivot irrigation system and in an amount in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00) for the loss of other equipment and machinery misappropriated by IJS Irrigation, L.L.C.
20. The plaintiffs have met, complied with and satisfied all obligations and conditions precedent to coverage contained in the insurance policy. At all times relevant herein, all premiums were current and paid on the

insurance policy, and the insurance policy was in effect and not expired, lapsed or cancelled at the time of the loss.

21. The plaintiffs are entitled to recover their damages as outlined in this First Amended Complaint, their costs, interest, reasonably attorney's fees pursuant to *Neb. Rev. Stat. § 44-359* or other applicable Nebraska law, and such other and further relief as the Court deems just and equitable.

WHEREFORE, the plaintiffs, Michael J. Wegener and L. Jerome Pribil, and Kool Agricultural SPR DE RL DE CV, pray for:

- A. A declaratory judgment finding that the insurance policy issued by AXA Insurance to the plaintiffs is a valid, binding and an enforceable contract of insurance, that it was in effect at the time of plaintiffs' loss, that the plaintiffs met all obligations and conditions of the insurance policy, and that the insurance policy provides coverage for damages suffered by the plaintiffs as described in this First Amended Complaint.
- B. A judgment in favor of the plaintiffs against AXA Insurance for damages in an amount in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for the loss of the pivot irrigation systems and other equipment and machinery; and
- C. A judgment in favor of the plaintiffs and against AXA Insurance for costs together with reasonably attorney's fees pursuant to *Neb. Rev. Stat. § 44-359*.

REQUEST FOR JURY TRIAL

Plaintiffs respectfully request a trial by jury and that the designated place of trial be in Lincoln, Nebraska.

DATED this 15th day of March, 2017.

MICHAEL J. WEGENER, L. JEROME PRIBIL,
and KOOL AGRICULTURAL SPR DE RL DE
CV, Plaintiffs,

By: /s/Stephen L. Ahl
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CERTIFICATE OF SERVICE

I electronically filed the foregoing ***First Amended Complaint for Declaratory Judgment and Breach of Contract, and Request for Jury Trial*** on this 15th day of March, 2017, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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